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### **OPINION**

For Immediate Release:  
October 19, 2007

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# How one person can victimize nine million Georgians

By: Sen. Preston Smith, Chairman, Senate Judiciary Committee



Standing outside the State Capitol on the morning of March 11, 2005, I knew there had been a tragedy. A cacophony of sirens, circling helicopters, police motorcycles roaring up sidewalks and people running in various stages of panic were some of the images seared into my memory. By the end of the day, I would find out that four decent, hardworking Georgians had been callously gunned down and killed by one man.

Prior to the initiation of the new statewide public defenders system, Georgia's 159 counties contributed between \$60 and \$70 million taxpayer dollars toward the cost of providing free lawyers to people accused of committing crimes. A mere three years later, with the "improvements" promised by a "streamlined" statewide system for efficiency and fairness, those costs have ballooned into a combined \$110 million dollars of county and state monies.

"Justice has no price tag," we are told, so criminals who claim to be indigent must have the unlimited use of the taxpayers' checkbook. This perhaps explains why 90 percent of those charged with crimes claim such a status. Moreover, under the court's order, we are now providing taxpayer funded lawyers to those charged with misdemeanor traffic offenses if they can be incarcerated for even a single day.

The current system is virtually without checks and balances. To receive the basic human need of healthcare, the state will verify that you are income qualified prior to receiving state funded Medicaid benefits. However, if you want a “free” lawyer all you have to do is step up to the bar and swear that you are indigent. Regardless of you or your family’s resources, you will be provided learned counsel to help you beat your rap.

The Nichols case is the poster child for a system that needs to be re-examined from the bottom up. The Legislature has budgeted plenty of money – \$40 million – to provide for indigent defense. Now it is up to the Public Defenders Council (like every other state agency) to live within that budget and prioritize how to spend that money on their programs.

Judge Fuller has approved a gold-plated OJ Simpson-styled defense team of four lawyers. He signed off on millions of dollars in expenditures for the defense team and then sealed the records so that there can be no oversight, even from the Legislature. He has made statements to the press after issuing gag orders to everyone else. By doing so, he has prohibited any other viewpoint from being expressed by those involved in the case and laid down an appellate record that virtually ensures that if Brian Nichols is convicted and sentenced to death, it will be overturned. It is almost as if Judge Fuller has joined the ranks as a fifth member of the defense’s dream team!

Even the Public Defenders’ Standards Council testified in front of the oversight committee that the defense expenditures in this case have been extravagant and unnecessary. In my view, this reflects poorly on Judge Barnes’ legacy and all the good judges that sit on the benches across our state and threatens to dismantle the entire system.

The judicial branch frequently cites respect for the separate and independent branches of government. Yet, Judge Fuller clearly is attempting usurp the power of the legislature and dictate how it appropriates and budgets public dollars, without any accountability to the voters.

Legislators are beginning to question the competence of a Judge who cannot manage a case or bring it to trial after spending millions of taxpayer dollars. It seems that the Enron board was more fiscally responsible.

As elected officials, we must take a larger view of the state’s priorities. Unlike the federal government, we do not run deficits or print our own money. So, for each million that Judge Fuller wants to spend on this case, we must take it away from other needed state priorities like children’s healthcare, elderly support, education and law enforcement.

The Georgia Constitution ensures that criminal defendants receive an “adequate” defense, but it most certainly does not require an extravagant defense team that most Georgian’s could never afford. The bottom line is that under this ballooning new bureaucracy, indigent defendants may receive a much better defense on the taxpayer dime than a hard-working citizen paying for his own way.

This is yet another example of why government-run programs usually do not produce good results. It also may signal that non-elected advocates are trying to end the death penalty policy in Georgia by making the judicial process too expensive. If that is true, the indictment of Brian Nichols may focus on the four homicides, but the case before Judge Fuller ultimately may victimize all nine million of Georgia’s citizens.

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*Sen. Preston Smith (R-Rome) serves as Chairman of the Judiciary Committee. He also is the Chairman of the Legislative Oversight Committee of the Georgia Public Defenders Standards Council and is the Chairman of the Appropriations sub-committee which establishes the budgets of the judiciary including the statewide public defenders system. He represents the 52nd Senate District which includes Floyd County and portions of Bartow and Gordon counties. He may be reached by phone at 404.656.0034 or by e-mail at [preston.smith@senate.ga.gov](mailto:preston.smith@senate.ga.gov).*